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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re S. D. et al., Persons Coming Under the Juvenile Court Law. SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. HANA B. et al., Defendants and Appellants.	D056749 (Super. Ct. No. J516570B-C)

APPEAL from orders of the Superior Court of San Diego County, Yvonne E. Campos, Judge, and Martin W. Staven, Retired Judge of the Tulare Superior Court, assigned by the Chief Justice, pursuant to article VI, section 6, of the California Constitution. Affirmed.

Hana B. and Rodney D. (together, the parents) appeal juvenile court orders terminating their parental rights to their minor children S.D. and Se.D. (together, the

minors) under Welfare and Institutions Code section 366.26.[1] The parents contend the court erred by not complying with the notice provisions of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) because statements from Rodney and the paternal grandmother about their Indian ancestry provided the court with reason to believe the minors were Indian children within the meaning of ICWA. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2009, the San Diego County Health and Human Services Agency (Agency) filed petitions in the juvenile court under section 300, subdivision (a), alleging three-year-old S.D. and one-month-old Se.D. were at substantial risk of harm because the parents had exposed them to violent confrontations in the family home. The court detained the minors in out-of-home care. The parents had histories of drug abuse and numerous child welfare referrals involving their other children. In 2007, parental rights were terminated as to the parents' one-year-old son.

On a paternity questionnaire, Rodney stated he may have American Indian heritage, but he did not know the tribe or band. Rodney did not comply with the court's order to complete the ICWA form 030, and did not cooperate with Agency's efforts to contact him for information about his Indian heritage.

At the jurisdiction and disposition hearing, Rodney testified that according to his mother, his great-grandmother was one-half Indian, but the identity of the tribe was

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1 Statutory references are to the Welfare and Institutions Code unless otherwise specified.

unknown. Rodney further testified his family never received any tribal benefits, lived on a reservation, or participated in any tribal events. He provided his mother's contact information and the court ordered Agency to investigate the possible application of ICWA. The social worker spoke to Rodney's mother, who said the minors' great-great-great grandmother, whose name she did not know, had some Indian heritage, but the identity of the tribe was unknown. Based on this information, the court found reasonable efforts had been made to inquire about the minors' Indian heritage, and ICWA did not apply. The court sustained the allegations of the petitions, declared the minors dependents, removed them from parental custody and placed them with relatives. It denied reunification services for the parents and set a section 366.26 selection and implementation hearing.

Agency recommended adoption as the minors' permanent plans. At a contested selection and implementation hearing, the court found the minors were adoptable and none of the exceptions to adoption applied. The court terminated parental rights and referred the minors for adoptive placement.

DISCUSSION

A

"ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes and families by establishing certain minimum federal standards in juvenile dependency cases." (*In re Shane G.* (2008) 166 Cal.App.4th 1532, 1538.) An Indian child is defined as any unmarried person who is under age 18 and is either (1) a

member of an Indian tribe, or (2) eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. (25 U.S.C. § 1903(4).)

ICWA imposes a duty to give the Indian child's tribe notice of the pending proceedings and provides the tribe a right to intervene "[w]hen a court 'knows or has reason to know that an Indian child is involved' in a juvenile dependency proceeding." (*In re Shane G., supra*, 166 Cal.App.4th at p. 1538; §§ 224.2, subd. (a), 224.3, subd. (d).) "Alternatively, if there is insufficient reason to believe a child is an Indian child, notice need not be given." (*In re Shane G., supra,* at p. 1538.) Notice requirements are meant to ensure that the child's Indian tribe will have the opportunity to intervene and assert its rights in the proceedings. (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421.)

Circumstances that may provide reason to know the child is an Indian child include the following: " '(A) A person having an interest in the child . . . informs the court or the county welfare agency . . . or provides information suggesting that the child is an Indian child; [¶] (B) The residence of the child, the child's parents, or an Indian custodian is in a predominantly Indian community; or [¶] (C) The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service.' (Cal. Rules of Court, former rule 5.664(d)(4); see § 224.3, subd. (b)[(1)-](3).) If these or other circumstances indicate a child may be an Indian child, the social worker must further inquire regarding the child's possible Indian status. Further inquiry includes interviewing the parents, Indian custodian, extended family members or any other person who can reasonably be expected to have information concerning the child's membership status or

eligibility. (§ 224.3, subd. (c).) If the inquiry leads the social worker or the court to know or have reason to know an Indian child is involved, the social worker must provide notice. (§§ 224. 3, subd. (d), 224.2, subd. (a)(5)(A)-(G).)" (*In re Shane G., supra*, 166 Cal.App.4th at pp. 1538-1539.) Notice must be given to the Bureau of Indian Affairs (BIA) if the specific identity or location of the tribe cannot be determined. (25 U.S.C. § 1912, subd. (a); *In re E.W.* (2009) 170 Cal.App.4th 396, 403.)

The court or social worker has "reason to know" an Indian child is involved if the family's circumstances "indicate there is a 'substantial enough chance,' or low but reasonable probability, the child is a member of, or eligible for membership in, an Indian tribe. (25 U.S.C. § 1903(2); § 224.2, subd. (a).)" (*In re Skyler H.* (July 28, 2010, D056307) ___ Cal.App.4th ___, ___ [2010 Cal.App. Lexis 1227].) More than a mere hint or bare suggestion of Indian ancestry is needed before notice is required. (*Ibid.*; *In re Jeremiah G.* (2009) 172 Cal.App.4th 1514, 1520.) "[A] child's specific but attenuated Indian heritage may not be sufficient to provide reason to know an Indian child is involved." (*In re Skyler H., supra*, at p. ___.)

B

Here, Rodney provided only vague and speculative information about the family's Indian heritage. (*In re S.B.* (2005) 130 Cal. App.4th 1148, 1160 [full disclosure of possible Indian heritage is entirely within parent's knowledge].) Rodney's family never received any tribal benefits, lived on a reservation, or participated in any tribal events. Although the minors' great-great-great grandmother was believed to have Indian heritage, neither her name nor her tribe was known. Because the totality of the family's

circumstances did not indicate there was a "low but reasonable probability" the minors are Indian children, ICWA's notice provisions were not triggered. (*In re Skyler H., supra,* ___ Cal.App.4th at p. ___.)

The parents do not claim that further inquiry as to the minors' Indian ancestry was required or would have made a difference. Instead, they seek reversal and remand so ICWA notice can be sent to the BIA. However, because there was no reason to know the minors were Indian children, notice to the BIA was not required. In any event, the parents do not suggest how notice to the BIA might be accomplished without any identifying information about the claimed Indian relative, especially when the family has not had a relationship with an Indian tribe for many generations. It is unreasonable to believe the BIA, under these circumstances, can conduct a meaningful search of its records to determine the minors' tribal heritage.

Where, as here, the record is devoid of any evidence a child is an Indian child, reversing the judgment terminating parental rights for the sole purpose of sending notice to the BIA would be "a formality that does not serve ICWA's goals or the [minors'] best interests." (*In re Skyler H., supra*, ___ Cal.App.4th at p. ___; see also *In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1431 [parents of non-Indian children should not be permitted to cause additional unwarranted delay and hardship without any showing the interests of ICWA are implicated].) Reversal for ICWA notice is not required.

DISPOSITION

The orders are affirmed.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

McINTYRE, J.